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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02204

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable, based on the repeal of Title 10, United States Code (U.S.C.), Section 654.

APPLICANT'S CONTENTIONS

He was discharged for being gay.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Captain (0-3).

On 10 Nov 93, the convening authority published General Court-Martial Order (GCMO) Number 11. The Order stated the applicant was found guilty of:

Charge II: Article 125. Specification: Did, at [REDACTED], between on or about 1 Nov 91 and on or about 30 Nov 91, commit sodomy.

Charge III: Article 92. Specification: Did, at [REDACTED] on divers occasions between on or about 1 Aug 91 and 3 Jun 92, fail to obey a lawful general regulation, to wit: paragraph 2-7c, Air Force Regulation 125-11, dated 15 Nov 82, by wrongfully entering an off-limits nightclub.

On 5 Nov 96, according to GCMO Number 1, dated 15 Oct 96, the Secretary of the Air Force approved the sentence of a dismissal and ordered it to be executed, but substituted a general discharge for the dismissal.

[REDACTED]

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[REDACTED]

Controlled by: SAF/MRB <i>Work-Product</i>
Limited Dissemination Control: N/A POC: SAF.MRBC.Workflow@us.af.mil

[REDACTED]

On 5 Nov 96, the applicant received a general (under honorable conditions) discharge. His reentry code is “Not Applicable” and his narrative reason for separation is “Court Martial.” He was credited with 12 years, 5 months, and 6 days of total active service.

For more information, see the excerpt of the applicant’s record at Exhibit B.

APPLICABLE AUTHORITY/GUIDANCE

On 20 Sep 11, with the repeal of the law commonly known as “Don’t Ask, Don’t Tell” (DADT), 10 U.S.C. Section 654, the Department of Defense (DoD) issued supplemental policy guidance on correcting military records of former service members who had been discharged under that law or a precursor. The guidance applied to the following types of requests: changing the narrative reason for a discharge; re-characterizing service as honorable; changing a reentry code to one allowing immediate eligibility to reenter service. The guidance directed that such requests should normally be granted when both of the following conditions are true: (1) the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT; and (2) there were no aggravating factors in the record, such as misconduct. For meritorious cases, the guidance further directed the use of “Secretarial Authority” as the new narrative reason for separation, with Separation Program Designator (SPD) code “JFF” and reentry code “1J.” Finally, the guidance noted that while each request must be evaluated individually, an honorable or under honorable conditions (general) discharge should normally be considered to indicate the absence of aggravating factors.

The complete DoD policy is at Exhibit C.

APPLICANT’S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE

The Board sent a copy of the DoD policy to the applicant on 26 Sep 23 for comment (Exhibit E) but has received no response.

AIR FORCE EVALUATION

AF/JAJI recommends granting the application. The applicant’s request for a discharge upgrade pertains to records resulting from a court-martial conviction and sentence to a dismissal. Consequently, pursuant to 10 U.S.C. Section 1552(f), the AFBCMR can take only two types of action: (1) correction of a record to reflect an action taken by review authorities under the UCMJ; or (2) action on the sentence of a court-martial for purposes of clemency. Hence, AFBCMR corrections can merely reflect actions regarding a court-martial that were already taken by review authorities under the Uniform Code of Military Justice (UCMJ); such as convening authority clemency, or appellate corrections; or the AFBCMR can take action only on the sentence, but even then, only on the basis of clemency and not on the basis of alleged legal error or injustice.

After careful review, there is insufficient evidence of error regarding the first type of authorized correction; however, there is evidence warranting clemency regarding the second type of

[REDACTED]

authorized correction. Applicable to this inquiry is the DoD's guidance to the AFBCMR known as the "Stanley Memorandum." On 20 Sep 11, the Under Secretary of Defense for Personnel and Readiness, issued the Memorandum for Secretaries of the Military Departments Correction of Military Records Following Repeal of Section 654 of Title 10, U.S.C. It provides guidance to service Discharge Review Boards and service Boards for Correction of Military/Naval Records regarding how to address requests for relief based on the repeal of federal law 10 U.S.C. Section 654, commonly known as "Don't Ask Don't Tell" (DADT). Relevant to the present case, the memorandum states, although each request must be evaluated on a case-by-case basis, the award of an honorable or general discharge should normally be considered to indicate the absence of aggravating factors. The guidance further states, it is DoD policy that broad, retroactive corrections of records from applicants discharged under DADT are not warranted. Although DADT is repealed effective 20 Sep 11, it was the law and reflected the view of Congress during the period it was the law. Similarly, DoD regulations implementing various aspects of DADT were valid regulations during that same period. AF/JAJI concludes the conviction for failing to obey a lawful general regulation is not evidence of an aggravating factor, but rather evidence of the same category of conduct that DADT policies prohibited. Furthermore, the applicant's discharge was based solely on DADT or a similar policy in place prior to enactment of DADT, per the Stanley Memorandum, and agree with applicant's contention he was discharged for being gay. Based on a careful review of the total record, including the applicant's stellar performance reviews while on active duty, AF/JAJI recommends upgrading his discharge to honorable, and make any other corrections consistent with Stanley Memorandum guidelines, including changes to the narrative reason for separation and the reentry code if appropriate.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 26 Sep 23 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an injustice. The Board concurs with the rationale and recommendation of AF/JAJI, and recommends relief based on the repeal of 10 U.S.C. Section 654. The absence of aggravating factors in the applicant's record meets the criteria of the DoD policy on records correction following the repeal of DADT. Therefore, the Board recommends correcting the applicant's record as indicated below.

RECOMMENDATION

[REDACTED]

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show the DD Form 214, *Certificate of Release from Active Duty*, issued on 5 November 1996, be amended to reflect he was discharged with service characterized as honorable, a Separation Code of JFF, a Narrative Reason for Separation of Secretarial Authority, and a Reentry code of 1J.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02204 in Executive Session on 14 Dec 23:

- [REDACTED], Panel Chair
- [REDACTED] Panel Member
- [REDACTED] Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 5 Aug 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: DoD Policy on Correcting Military Records after Repeal of DADT, dated 20 Sep 11.
- Exhibit D: Advisory Opinion, AF/JAJI, dated 25 Sep 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Sep 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

		9/8/2025
X	[REDACTED]	

Board Operations Manager, AFBCMR
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